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*Via Electronic Mail*

March 31, 2010

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

**RE: Docket No. R-1343; Regulation E**

Dear Ms. Johnson:

MasterCard Worldwide ("MasterCard")<sup>1</sup> submits this comment letter in response to the proposed clarifications to Regulation E (generally, "Proposed Clarifications") issued by the Board of Governors of the Federal Reserve System ("Board") on March 1, 2010. MasterCard appreciates the opportunity to offer its comments on the Proposed Clarifications.

**Scope**

MasterCard recognizes that the Proposed Clarifications are limited in scope and intended to address questions raised by institutions following the Board's November 17, 2009, publication in the *Federal Register* of a final rule under Regulation E that governs the assessment of overdraft fees for ATM and one-time debit card transactions (generally, "Covered Transactions"). Although we have limited our comments accordingly and do not raise here issues addressed in our prior comments, we do not necessarily endorse all aspects of the final

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<sup>1</sup> MasterCard Worldwide (NYSE: MA) advances global commerce by providing a critical link among financial institutions and millions of businesses, cardholders and merchants worldwide. Through the company's roles as a franchisor, processor and advisor, MasterCard develops and markets secure, convenient and rewarding payment solutions, seamlessly processes more than 20 billion payments each year, and provides industry-leading analysis and consulting services that drive business growth for its banking customers and merchants. With more than one billion cards issued through its family of brands, including MasterCard®, Maestro® and Cirrus®, MasterCard serves consumers and businesses in more than 210 countries and territories, and is a partner to 25,000 of the world's leading financial institutions. With more than 25 million acceptance locations worldwide, no payment card is more widely accepted than MasterCard. For more information go to [www.mastercard.com](http://www.mastercard.com).

rule. Except for the two issues addressed below, we generally believe that the Proposed Clarifications are appropriate and provide needed guidance to institutions on important compliance issues.

#### **Clarification of § 205.17(b)(4) Exception**

Section 205.17(b)(4) is captioned as an “exception” and establishes such to the overdraft notice and opt-in requirements for institutions that have a policy and practice of declining Covered Transactions for which authorization is requested when the institution has a reasonable belief that the consumer’s account has insufficient funds for the transaction. This exception, which is reasonable on its face, would apply, for example, in situations where an institution authorizes a debit card purchase on the reasonable belief that a consumer has sufficient funds but where a check subsequently posts to the account before the debit card transaction is settled and results in an overdraft. In the relatively infrequent circumstances in which this situation may occur, the relief afforded under the plain language of § 205.17(b)(4) is narrow and appropriate.

Under the Proposed Clarifications, however, the Board would eliminate what little relief is provided under the exception and essentially render its scope meaningless to institutions for purposes of understanding its application. For example, the proposed changes to § 205.17(b)(4) and the related Official Staff Commentary eliminate all references to the term “exception,” completely alter its plain meaning application, and effectively amount to a restatement of the general rule—*i.e.*, that an institution may not charge an overdraft fee for Covered Transactions unless the requirements of § 205.17(b)(1) are met. We find this proposed change somewhat surprising in light of statements in the Supplementary Information accompanying the final rule that the exception was already “modified from the proposal for clarity,” and that “consumer group and industry commenters generally supported the proposed exception.” While we have some doubt as to whether this can reasonably be called a clarification, we nonetheless recognize that the substance of the proposed revisions reflects the Board’s intended interpretation as explained by Board staff after the final rule was issued. Accordingly, if the Board intends to adopt the changes to § 205.17(b)(4) substantially as proposed (*i.e.*, by eliminating any exception to the notice and opt-in requirements), we urge the Board to eliminate the section in its entirety in order to reduce any remaining uncertainty as to the effect of having a policy and practice of declining to authorize and pay Covered Transactions.

#### **Clarification of Prohibited Fees or Charges**

The Proposed Clarifications would add a number of examples to Regulation E’s Official Staff Commentary to help explain the application of the prohibition on fees for Covered Transactions. Generally speaking, we support the Board’s effort to clarify the scope of the prohibition on overdraft fees. For example, the Proposed Clarifications make clear that the fee prohibition for Covered Transactions extends to daily or sustained overdraft fees, as well as negative balance or similar fees, but does not generally affect the assessment of any overdraft fees for non-Covered Transactions.

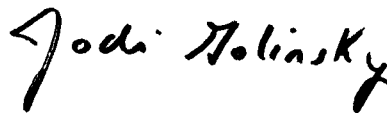
Although the examples provide additional guidance to institutions in understanding the scope of § 205.17(b)(1), we are concerned that the Proposed Clarifications contemplate

significant operational changes which may not have been reasonably foreseen by institutions when the final rule was issued in November 2009. For example, the Proposed Clarifications are based on transaction posting and payment allocation assumptions that are not necessarily current practice throughout the industry and may not have been reasonably inferred from either the language of § 205.17 or any of the applicable Official Staff Commentary. The operational and other system changes institutions will have to make as a practical matter to implement these assumptions by the proposed effective date are significant and likely outweigh the consumer benefits over the near-term. We also note that the Board's assumptions are likely to be particularly burdensome for smaller institutions to implement over a short period of time. Accordingly, if the Board adopts these examples substantially as proposed, we urge the Board to extend the compliance timeframe an additional six months and adopt a mandatory compliance date of January 1, 2011.

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MasterCard appreciates the opportunity to provide comments on the Proposal. If you have any questions regarding our comments, please do not hesitate to call me at (914) 249-5978, or our counsels at Sidley Austin LLP in this matter, Michael F. McEneney, at (202) 736-8368, or Karl F. Kaufmann, at (202) 736-8133.

Sincerely,

A handwritten signature in black ink that reads "Jodi Golinsky". The signature is written in a cursive, flowing style.

Jodi Golinsky  
Vice President  
Regulatory and Public Policy Counsel

cc: Michael F. McEneney, Esq.  
Karl F. Kaufmann, Esq.